

ABATEMENT PLEA IS OVERRULED BY JUDGE ABBOTT

Late County Grand Jury's
Work Will Stand.

RULING IN M'CLURE CASE
APPLIES TO ALL OTHERS

The indictments found by the late Bernalillo county grand jury will stand as valid.

Judge Abbott yesterday afternoon handed down a decision in which he overrules the plea in abatement filed by counsel for Emilio McClure, charged with murder, with the statement that the ruling would apply in all other cases in which similar pleas have been filed.

Plea in abatement attacking the validity of the indictments found by the late grand jury were filed in the cases of McClure charged with murder, Frank A. Hubbell charged with embezzlement and misappropriation of public funds, Estelito Vigil, under indictment on similar charges, and one or two Albuquerque saloon owners indicted for operating gaming tables without paying the license. The court ruling is made on the McClure case, which was first presented, but holds for the other actions as well and as a consequence all will come to trial in due course of business in the district court.

The validity of the late grand jury was attacked by counsel for McClure and the others on the ground that one member of the jury served through the sitting when another man had been summoned, and on the additional ground that one member of the jury lived outside of Bernalillo county and within the limits of the territory.

Judge Abbott's ruling on this question is of deep interest and is given in full below:

Territory of New Mexico. In the District Court, Bernalillo County.

Territory of New Mexico, vs. Emilio McClure, No. 3027.

Opinion Upon Plea in Abatement.

An indictment against the defendant for murder was returned by the grand jury, Bernalillo county, September 26, 1905. It is claimed in support of the plea to abate the indictment thus found that the venire for the jurors was not issued to or served by the sheriff of said county, as required by law.

This court has already passed on the same question, in effect, in Hubbell vs. Armijo, No. 4876, and on appeal the case has now come to this court of the territory for decision there.

It is alleged, however, that the grand jury which brought in the indictment was not made up as required by law, in that, as alleged, one of the members of the grand jury, was not drawn from the box containing the names of the persons listed for jury duty in Bernalillo county, to-wit: the name of George H. Brewer was drawn, and that he was not the same person as George H. Brewer, the supreme court of the United States has said that "the law knows of no such distinction name, and if so the middle letter is immaterial."

Keene vs. Meade, 3, Peters, 1.

Gaines vs. Dunn, 14, Peters, 327.

It may well be that George H. Brewer was qualified to serve although selected as George H. Brewer.

It is also claimed that Preciliano Lucero was not a resident of Bernalillo county at the time when he was selected for service or when he served as a member of the grand jury by which said indictment was found.

It is not alleged that there was any George H. Brewer who was a resident of Bernalillo county, or qualified to serve as a juror for said county at the time when said name was drawn from the box containing the names of those listed for jury duty at any other time, nor is it alleged that the defendant suffered any "actual injury" from the fact that said George H. Brewer and Preciliano Lucero, either or both, were members of said grand jury. The statute law, chapter 118, of the session laws of 1905, makes residence in the territory for at least a year, and in the county for at least six months next preceding the time when one shall be selected or drawn as a juror a qualification for jury duty, and provides that those whose names are drawn as required by law shall be jurors. It also provides, however, that "no disqualification or exemption shall be a ground for any indictment found or any verdict rendered by any jury unless actual injury to the person complaining of the same shall be shown." The circumstances of the case at hand show that the two men in question, although they are not and cannot be in evidence at the present stage of this case, may serve as illustrations of the need of such a provision of law as that above set forth. There was at the time, it is said, a George H. Brewer, who was a resident of Albuquerque, but he ceased to be a resident some months ago and before the lists for jury duty were made up. He was, besides, a minister, and so exempt from serving as a juror, if he should so elect. The jury commissioners knew these facts and they also knew Mr. George H. Brewer, a well known citizen of Albuquerque and knew they were putting on the list his name. The sheriff, having the venire for service summoned George H. Brewer, supposing him to be the man intended, and he accordingly did attend and serve as a member of the grand jury, explaining to the court beforehand that his name was George H. Brewer and that there was no George H. Brewer residing in Bernalillo county to his knowledge.

Preciliano Lucero, the other member of the grand jury whose right to serve is questioned, had been for years a resident of Bernalillo county and perhaps still is one. If he is not, it is because the legislative assembly at its last session changed the boundaries of Torrance county, so as to include within them a part of the land and perhaps some of the residents of Bernalillo county. When he was examined as to his qualifications he said he lived in the last named county, and undoubtedly, by thought, so. Indeed he may be still a resident of that county, for even if the act of the assembly, in changing the boundaries of Torrance county was legal it does not appear that the new lines have been located, or that Lucero's place of residence is within them. The utmost vigilance of the courts cannot successfully guard against all possible disqualifications of this kind. The legislative assembly provides very wisely, in my opinion, that any disqualifications not shown to be injurious to the party complaining should not invalidate an indictment or a verdict.

Plea in abatement overruled.

Washington Mine Case.

The hearing of evidence in the Washington mine case occupied Judge Abbott all day yesterday in chambers.

For the Children

There will probably be several more witnesses and it is expected that the greater part of the week will be taken up in the hearing of the final witnesses.

The quo warranto action of T. S. Hubbell against Sheriff Armijo has not yet been set for hearing.

A SAN FRANCISCO PHYSICIAN

Uses Herpicide Successfully in Treating Syphilis of the Beard.

He says: "I recently treated a case of syphilis (similar to 'barber's itch') of the lower lip, with Newbro's Herpicide. There was an extensive loss of beard with inflammation extending well down on the chin. The result of the application of Herpicide was most gratifying. The loss of beard ceased and a new growth of hair is now taking place over the once inflamed area. (Signed.)"

Meville E. O'Neill, M. D., 845 Howard St., San Francisco, Cal.

"San Francisco, Cal."

Herpicide kills the dandruff germ and permits the hair to grow abundantly.

Sold by leading druggists. Send 10c in stamps for sample to The Herpicide Co., Detroit, Mich. E. H. Briggs & Co., special agents.

Water Plant for Terrace Addition.

The Terrace Improvement company has received a carload of well boring machinery and will begin work at once on drilling a well for its water plant which is to supply the prospective residents of the addition.

The work of changing the sand hills into desirable city lots is progressing rapidly and a immense amount of dirt has been moved.

When You Have a Bad Cold

You want a remedy that will not only give quick relief but effect a permanent cure.

You want a remedy that will relieve the lungs and keep expectoration easy.

You want a remedy that will counteract any tendency toward pneumonia.

You want a remedy that is pleasant and safe to take.

Chamberlain's Cough Remedy meets all of these requirements and for the speedy and permanent cure of bad colds stands without a peer. For sale by all druggists.

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To succeed these days you must have plenty of grit, courage, strength. How is it with the children? Are they thin, pale, delicate? Do not forget Ayer's Sarsaparilla. You